promise." *Johnson* v. *McClung* (1885), 26 W. Va. 659, shows the effect of this section to be not to divest rights, but to afford remedies to parties not allowed by technical rules of pleading at common law, and interprets the section as reading thus: "If a covenant or promise be made for the sole benefit of a person with whom it is not made, or (if a covenant or promise is made for the sole benefit of a person) with whom it is made jointly with others, such person may maintain in his own name any action thereon, which he might maintain in case it had been made with him only, and the consideration had moved from him to the party making such covenant or promise."

The Revised Statutes of *Wisconsin* (ed. 1889, p. 1482) provide: "SECTION 2605. Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in section two thousand six hundred and seven; but this section shall not be deemed to authorize the assignment of a thing in action not arising out of the contract."

The Revised Statutes of *Wyoming* (ed. 1887, page 558) provide: "SECTION 2382. An action must be prosecuted in the name of the real party in interest, except as provided in the next two following sections; but when a party asks that he may recover by virtue of an assignment, the right of set-off, counter-claim and defense, as allowed by law, shall not be impaired." The sections referred apply to actions on bonds and by executors, officers, trustees and so forth.

In conclusion, the right of a third party to sue upon a contract made with another for his benefit, is upheld by the Supreme Court of the United States in cases where assets have come to the promisor's hands, or under his control, which in equity belong to such third party, and that upon the ground of an implied promise, and also in cases where the plaintiff is the beneficiary solely interested in the promise: *supra*, pages 600–1, and *Hendrick* v. *Lindsay et al.* (1876), 93 U. S. 143.

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ABSTRACTS OF RECENT DECISIONS.

BILLS AND NOTES.

Alteration of note under seal, where no rate of interest is expressed and the legal rate is seven per cent, by an *addendum* placed on the lower end of the paper, after its execution and delivery, and not incorporated in the body of the note, reciting that "the above note is to be accounted for with interest at eight per cent, per annum," which *addendum* is signed by the principal, but not by his surety, discharges the latter from all liability; such *addendum* is not a new contract of the principal alone, but constitutes a material alteration of the original note. *Sanders* v. *Bagwell*, S. Ct. S. C., March 6, 1890.

CONSTITUTIONAL LAW.

Peddling without a license cannot be forbidden by a State statute to citizens of another State; such prohibition is an interference with interstate commerce. *Wrought Iron Range Co.* v. *Johnson*, S. Ct. Ga., April 4, 1890.

Rolling stock of a foreign railroad company, which is used in interstate commerce, is not subject to taxation by a State in which such company operates a leased road. *Bain* v. *Richmond & D. R. R. Co.*, S. Ct. N. C., March 17, 1890.

CRIMINAL LAW.

Confession made before the coroner, by a person arrested for murder, after he had been informed as to his right to testify or not, and that his statement might be used against him, is voluntary and admissible in evidence upon his trial, although he subsequently refuses to sign the deposition and denies having made it. *People* v. *Chapleau*, Ct. App. N. Y., April 29, 1890.

DEEDS.

Conveyance to a man and his wife and "the survivor of them, in his or her own right," gives each grantee an estate for life, with remainder in fee to the survivor. *Mittel* v. *Karl*, S. Ct. Ill., May 14, 1890.

Undue influence, sufficient to warrant the setting aside of a deed is shown by the following facts: A father, according to a long-fixed and oft expressed intention to make provision for his natural daughter, to whom he was deeply attached, conveyed certain land to her; his legitimate daughter and her husband afterwards importuned him with threats to have the land reconveyed; he thereupon went with the counsel of his son-in-law to the house where his natural daughter was visiting, and, in the absence of any one to represent or advise her, persuaded her against her will to sign a deed which he had taken with him, already prepared, and which reconveyed the land to himself; the father was at the time old and feeble, and died only a few days afterwards. *Davis* v. *Strange's Exer.*, S. Ct. App. Va., April 10, 1890.

FIRE INSURANCE.

Liability upon a policy for $3000, covering twenty-one different pieces of property, worth in the aggregate $90,000, and insuring each of such pieces for one-thirtieth of its value, such policy also stating that the company should be liable only for such "proportion of any loss as the sum insured bears to the whole sum insured," and the total insurance being $60,000, will be fixed at one-twentieth of the total loss sustained. *Illinois Mut. Ins. Co.* v. *Hoffman*, S. Ct. Ill., April 22, 1890.

Machinery in a mill does not constitute a "mill or manufactory" within the meaning of a clause in a policy rendering it void "if a building covered by this policy shall become vacant or unoccupied, or, if a mill or manufactory, shall stand idle," without notice to and the consent of the company, and the standing idle of the machinery does not create a forfeiture. *Halpin* v. *Ins. Co. of North America*, Ct. App. N. Y., 2d Div., March 21, 1890.

Morocco factory, which is vacated by the tenants, and its key given to the owner's renting agent, who visits it occasionally, is unoccupied within the meaning of a clause in a policy making it void, if the building become vacant or unoccupied. *Halpin* v. *Aetna Fire Ins. Co.*, Ct. App. N. Y., 2d Div., March 21, 1890.

INFANTS.

Negligence may be attributed to a child seven years of age; the true rule is that a child is to be held to the exercise of care for its personal safety according to its age, experience and intelligence, and the circumstances by which it is surrounded. *Chicago City Ry. Co.* v. *Wilcox*, S. Ct. Ill., May 14, 1890.

Negligence of parents, in permitting a child to stray beyond their immediate control into a place of danger, cannot be imputed to the child. *Id.*

LANDLORD AND TENANT.

Reduction of rent, reserved by a written lease, may be orally agreed upon between the parties, and when, at the end of each quarter, the reduced rent has been paid to and receipted for in full by the lessor, the latter cannot revoke the agreement, which may be proved by parol in defense of an action to recover the full amount reserved by the lease. *McKenzie* v. *Harrison*, Ct. App. N. Y., 2d Div., April 22, 1890.

LIFE INSURANCE.

Phrases, "related to," "relations," and "next of kin," when used in an insurance policy or certificate, as in any other contract or in a statute or will, include only relations by blood, and not connections by marriage. *Supreme Council of Chosen Friends* v. *Bennett*, Ct. Ch. N. J., May 22, 1890.

MASTER AND SERVANT.

Child of tender years may recover from his master for injuries received from machinery which the master negligently ordered him to oil, and the dangerous nature of which he could not properly appreciate, provided he used due care according to his capacity. *Hinckley* v. *Horazdowsky*, S. Ct. Ill., May 14, 1890.

Lien upon cattle, under a statute which gives to any person who shall depasture or feed any horses, cattle, hogs, sheep or other live stock, or bestow any labor, care or attention on the same, at the request of the owner or lawful possessor thereof, a lien for his just and reasonable charges, cannot be acquired by one who is employed as a servant to tend and feed the cattle of his master. *Bailey* v. *Davis*, S. Ct. Or., May 8, 1890.

MECHANIC'S LIENS.

Replacing defective hearths previously put in a house which was otherwise completed, does not extend the time for filing a mechanic's lien. *Harrison* v. *Women's Homeopathic Hospital*, S. Ct. Pa., May 12, 1890.

MORTGAGES.

Acknowledgment under seal, made by a grantee more than a year after the execution of his deed, that he held the land as security for a note, and that after payment of the note he had no further right to the land, does not prove the deed a mortgage, unless it is shown that such acknowledgment was made under an agreement entered into at the time of the execution of the deed. *Waters* v. *Crabtree*, S. Ct. N. C., April 21, 1890.

Real estate mortgage, made by the owner to a partnership in its firm name, to secure an indebtedness to it, and duly executed and recorded, as required by statute, constitutes a valid lien upon the property in favor of the firm. *New Vienna Bank* v. *Johnson*, S. Ct. Ohio, April 29, 1890.

PARTNERSHIP.

Agreement between two persons by which one of them advances the capital and the other performs the services necessary to carry on a business, the capital to be repaid out of the partnership stock, and the balance then remaining, after payment of expenses, to be equally divided as profits, constitutes a partnership, and the relation is not altered by the fact that interest is charged upon the capital furnished. *Southern Fertilizer Co.* v. *Reames*, S. Ct. N. C., April 14, 1890.

PUBLIC OFFICERS.

Secretary of the Treasury, who has acted upon every matter of discretion in considering whether the United States is indebted to a citizen for work done under a contract, and has arrived at the point where the only act to be performed is the delivery of the draft for his compensation, which act is purely ministerial, may be compelled by *mandamus* to make such delivery. *U. S. ex rel. Redfield* v. *Windom*, S. Ct. D. C., May 5, 1890.

RAILROADS.

Injunction will not be granted against a railroad company to restrain it from using its tracks in the neighborhood of the complainant's dwelling in making up its outgoing trains and in unmaking its incoming trains, in doing which loud noises are made by means of the cars, engines and men, smoke and steam are cast off, the dwelling of the complainant is caused or vibrate and, when the doors or windows are open, smoke and steam are carried therein, so that the inmates are aroused from sleep and the complainant's wife is afflicted with nervousness, unless it be also shown that there is some abuse or negligent use by the railroad of its franchise. *Beideman* v. *Atlantic City RR. Co.*, Ct. Ch. N. J., April 18, 1890.

Warning is not required to be given to passengers on board a railroad train before starting the train from a wood station where it has stopped to take on wood, and a passenger who goes upon the platform of a car, after the train has stopped, contrary to a posted notice warning him not to do so, and, while standing there without holding on to the railing, is thrown off by the starting of the train and injured, cannot recover from the railroad company, although no signal for starting was given. *Malcom* v. *Richmond & D. R. R. Co.*, S. Ct. N. C., March 31, 1890.

WILLS.

Erasure by a testatrix of the word "fourteenth," without rendering it illegible, and the interlineation of the word "twelfth," the effect of which would be to increase smaller devises to larger ones, is inoperative and does not change nor revoke the provision of the original will. *Gardiner* v. *Gardiner*, S. Ct. N. H., March 14, 1890.

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